

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 SENATE BILL 821

By: Sykes

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5
6 AS INTRODUCED

7 An Act relating to state contracts for legal
8 services; creating the Private Attorney Retention
9 Sunshine Act; providing short title; requiring
10 request for proposal process for retention of lawyer
11 or law firm on behalf of state; requiring Internet
12 website to contain conspicuous statement; requiring
13 agency to maintain list of persons and entities
14 receiving requests for proposals; authorizing
15 agencies to provide Internet website access to
16 request for proposals; prescribing period of time to
17 maintain access; requiring website to contain
18 information regarding vendor to which contract
19 awarded; imposing requirement with respect to
20 documents accessible through website; defining term;
21 requiring executive review of certain contracts;
22 requiring filing of proposed contract and written
23 statement with Governor; providing requirements of
24 written statement; providing time period for review;
providing time period for which the Governor may hold
a public hearing; requiring report from the Governor;
allowing state agency or state agent to enter into
certain proposed contract if the Governor makes no
changes; requiring revised contract in certain
circumstances; requiring letter to accompany revised
contract if all recommended changes are not made;
providing for additional hearings and additional
reports; requiring certain revised contract terms to
be treated as a new proposed contract; providing for
expedited review of proposed contract; requiring
certain statement from retained outside counsel at
conclusion of legal proceeding; providing maximum
amount of fees and expenses to be incurred; providing
for reduction in fee; providing that Act does not
expand authority of state agency or state agent;
providing that certain contracts are not subject to

1 the Oklahoma Central Purchasing Act; providing for
2 discretion in the request for proposal process;
3 providing for codification; and providing an
4 effective date.

5 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

6 SECTION 1. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 20.1 of Title 74, unless there
8 is created a duplication in numbering, reads as follows:

9 This act shall be known and may be cited as the "Private
10 Attorney Retention Sunshine Act".

11 SECTION 2. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 20.2 of Title 74, unless there
13 is created a duplication in numbering, reads as follows:

14 A. Any state agency or state agent that wishes to retain a
15 lawyer or law firm to perform legal services on behalf of this
16 state, where the fees and expenses for the services will exceed or
17 can be reasonably expected to exceed Five Thousand Dollars
18 (\$5,000.00), shall not do so until a request for proposal process
19 has been undertaken.

20 B. The contracting agency shall cause an Internet website
21 controlled by or on behalf of the agency to contain a conspicuous
22 statement, visible from the main webpage or equivalent segment of
23 the website, that after one hundred twenty (120) days after the
24 contract for which the request for proposals has been awarded, any

1 person may obtain a copy of the request for proposal from the agency
2 which prepared it and the identity of all persons or entities to
3 whom the request for proposal was transmitted.

4 C. Each agency subject to the provisions of this section shall
5 maintain a list of the persons and entities to whom a request for
6 proposal has been transmitted, including the mailing address to
7 which the proposal was mailed, and shall make such information
8 available for inspection within one hundred twenty (120) days after
9 the contract has been awarded.

10 SECTION 3. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 20.3 of Title 74, unless there
12 is created a duplication in numbering, reads as follows:

13 A. The request for proposal required by Section 2 of this act
14 and all responses submitted to the request for proposals may be made
15 accessible through an Internet website maintained by or on behalf of
16 the state agency.

17 B. If the request for proposal has been made accessible on the
18 Internet website, the information shall remain accessible through
19 the website for a period of three (3) years after the request is
20 transmitted by the agency to potentially interested persons.

21 C. The identity of a vendor to whom or to which an agency has
22 awarded a contract in response to a request for proposals, a brief
23 description of the services to be performed under the contract, the
24 projected total payments to be made under the contract, the actual

1 payments made under the contract, once made, and the date the
2 contract was awarded shall be accessible on the Internet website for
3 a period of three (3) years from the date the contract is awarded.

4 D. All information required to be accessible by the provisions
5 of this section or any document that the agency makes accessible
6 pursuant to Section 2 of this act shall be presented in a format
7 which allows complete review of the content of such documents.

8 SECTION 4. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 20.4 of Title 74, unless there
10 is created a duplication in numbering, reads as follows:

11 No state agency or state agent shall enter into a contract for
12 legal services exceeding Five Hundred Thousand Dollars (\$500,000.00)
13 without the opportunity for an executive review of the terms of the
14 contract in accordance with Section 5 of this act.

15 SECTION 5. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 20.5 of Title 74, unless there
17 is created a duplication in numbering, reads as follows:

18 A. For purposes of this section, a contract in excess of Five
19 Hundred Thousand Dollars (\$500,000.00) is one in which the fee paid
20 to an attorney or law firm, either in the form of a flat, hourly, or
21 contingent fee, and expenses of the attorney or law firm exceeds or
22 can be reasonably expected to exceed a total of Five Hundred
23 Thousand Dollars (\$500,000.00).

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1 B. As used in this section, "fees" shall include, but not be
2 limited to, any compensation for legal services however measured,
3 including but not limited to flat, hourly, and contingent fees.

4 C. Any state agency or state agent proposing to enter into a
5 contract for legal services exceeding Five Hundred Thousand Dollars
6 (\$500,000.00) shall file a copy of the proposed contract with the
7 Governor and shall also accompany the proposed contract with a
8 written statement that identifies the following:

9 1. The reasons the state should retain private counsel and the
10 consideration of alternatives;

11 2. The request for proposal process that has been undertaken
12 with respect to the proposed legal services;

13 3. The reasons for the selection of the lawyer or law firm that
14 is the proposed contracting party;

15 4. The past or present relationship, if any, between the
16 lawyer, law firm, or any partner or other principal in the law firm
17 and the state agency or state agent proposing to enter into the
18 contract; and

19 5. If the contract contemplates that all or part of the fee is
20 contingent on the outcome of the legal proceeding, the reasons the
21 contingent fee arrangement is believed to be in the interest of the
22 state and any efforts undertaken to obtain private counsel on a
23 noncontingent-fee basis.

1 D. Except as provided in subsection G of this section, the
2 Governor shall review the proposed contract and written statement
3 within thirty (30) days of receipt.

4 E. The Governor may hold a public hearing on the proposed
5 contract and, whether or not a public hearing is held, shall issue a
6 report to the referring state agency or state agent. The report
7 shall include any recommended changes to the proposed contract
8 approved by the Governor. If the Governor recommends no changes to
9 the proposed contract within thirty (30) days of the receipt, the
10 referring state agency or state agent may enter into the proposed
11 contract. If the report of the Governor recommends changes to the
12 proposed contract in accordance with this subsection, the state
13 agency or state agent shall review the report and prepare a revised
14 contract as deemed appropriate in view of the report and shall file
15 with the Governor a copy of the revised contract.

16 F. If the revised contract does not contain all changes
17 recommended by the Governor, the referring state agency or state
18 agent shall include with the revised contract filed with the
19 Governor a letter stating the reasons why the recommended changes
20 were not adopted. The Governor may hold additional hearings and
21 issue additional reports in the discretion of the Governor. Not
22 earlier than thirty (30) days after receipt of the letter and
23 revised contract from the Governor, the referring state agency or
24 state agent may enter into the revised contract. Any revised

1 contract containing terms not previously reviewed or recommended by
2 the Governor that can reasonably be expected to increase the fees
3 and expenses to be paid shall be treated as a new proposed contract
4 and shall be filed and reviewed in accordance with the provisions of
5 this section.

6 G. In the event the state agency or state agent in a writing
7 filed with the Governor states that time exigencies require that the
8 state retain counsel before the periods provided in subsections C,
9 D, E and F of this section have elapsed, and provides the reasons
10 therefor, the Governor shall consult with the state agency or state
11 agent to establish an expedited schedule for review and
12 recommendations on the proposed contract.

13 SECTION 6. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 20.6 of Title 74, unless there
15 is created a duplication in numbering, reads as follows:

16 A. At the conclusion of any legal proceeding for which a state
17 agency or agent retained outside counsel on a contingency-fee basis,
18 the state shall receive from counsel a statement of the hours worked
19 on the case, expenses incurred, the aggregate fee amount, and a
20 calculation of the hourly rate based on hours worked divided into
21 fee recovered, less expenses.

22 B. In no case shall the state incur fees and expenses in excess
23 of One Thousand Dollars (\$1,000.00) per hour for legal services. In
24 cases where a disclosure submitted in accordance with subsection A

1 of this section indicates an hourly rate in excess of One Thousand
2 Dollars (\$1,000.00) per hour, the fee amount shall be reduced to an
3 amount equivalent to One Thousand Dollars (\$1,000.00) per hour.

4 SECTION 7. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 20.7 of Title 74, unless there
6 is created a duplication in numbering, reads as follows:

7 Nothing in the Private Attorney Retention Sunshine Act shall be
8 construed to expand the authority of any state agency or state agent
9 to enter into contracts where no such authority previously existed.

10 Contracts entered into pursuant to the Private Attorney
11 Retention Sunshine Act shall not be subject to the Oklahoma Central
12 Purchasing Act, and the request for proposal process shall be
13 subject to the discretion of the agency head or his or her designee.

14 SECTION 8. This act shall become effective November 1, 2017.

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